

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **June 2, 2023**

PHUNWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001-37862

(Commission File Number)

30-1205798

(IRS Employer Identification No.)

1002 West Avenue, Austin, Texas

(Address of principal executive offices)

78701

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(512) 693-4199**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	PHUN	The NASDAQ Capital Market
Warrants to purchase one share of Common Stock	PHUNW	The NASDAQ Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

As previously reported, on June 2, 2023, Phunware, Inc. (the "Company") announced that Matt Aune would be leaving his role as Chief Financial Officer, effective as of June 2, 2023 (the "Transition Date"). Furthermore, on the Transition Date, the Company entered into a Confidential Separation, Transition, and General Release Agreement with Mr. Aune (the "Aune Separation Agreement"). The Aune Separation Agreement provides that Mr. Aune would cease as the Company's Chief Financial Officer as of the Transition Date and his employment will terminate with the Company effective June 30, 2023 (the "Separation Date"). The Company and Mr. Aune have agreed that from the period of the Separation Date and continuing through December 31, 2023 (the "Advisory Period"), Mr. Aune will provide certain additional transitional services to the Company.

In exchange for Mr. Aune's performance of obligations to the Company under the terms of the Aune Separation Agreement, including a general release of claims which excludes certain specified types of claims, Mr. Aune will receive severance consisting of (i) six months of his continued base salary (in the aggregate amount of \$175,000), commencing on July 1, 2023 and continuing through December 31, 2023, in bi-monthly installments and in accordance with the Company's general payroll policies, less applicable taxes and withholdings, (ii) the Company will pay continuation coverage under the Company's group health plan in accordance with COBRA for Mr. Aune, his spouse and his dependents, through the earlier of (x) the date on which he commences full-time employment with another entity and (y) December 31, 2023, and (iii) accelerated vesting of 132,330 restricted stock units (which will vest on June 30, 2023).

In exchange for Mr. Aune's continued service as an advisor during the Advisory Period, Mr. Aune will remain eligible to vest in his remaining restricted stock unit grant during the Advisory Period and, if Mr. Aune enters into an additional release of claims with the Company in December 2023, Mr. Aune will receive accelerated vesting of any then-remaining unvested restricted stock units on December 31, 2023.

The foregoing is only a summary of the material terms of the Aune Separation Agreement and does not purport to be a complete description of the rights and obligations of the parties thereunder. Furthermore, the foregoing is qualified in its entirety by reference to the Aune Separation Agreement, which is filed as Exhibit 10.1 to the Current Report on Form 8-K and is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

A copy of the press release issued by the Company on June 2, 2023 announcing the transition of the Company's chief financial officer is attached hereto as Exhibit 99.1 and is incorporated herein by reference. The information furnished pursuant to this Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or subject to the liabilities of that Section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. The information furnished and in the accompanying exhibit shall not be incorporated by reference into any filing with the Securities and Exchange Commission made by the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<i>Exhibit No.</i>	<i>Exhibit Title</i>
10.1	Confidential Separation, Transition, and General Release Agreement by and between Phunware, Inc. and Matt Aune dated June 2, 2023.
99.1*	Press Release dated June 2, 2023 titled "Phunware Announces CFO Transition"
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

* Furnished herewith

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: June 8, 2023

Phunware, Inc.

By: /s/ Troy Reisner
Troy Reisner
Chief Financial Officer

**CONFIDENTIAL SEPARATION, TRANSITION AND
GENERAL RELEASE AGREEMENT**

This **CONFIDENTIAL SEPARATION, TRANSITION AND GENERAL RELEASE AGREEMENT**, dated as of June 2, 2023 (this "**Agreement**"), by and between Phunware, Inc., a Delaware corporation (the "**Company**") and Matt Aune ("**Executive**"). The Company and Executive are sometimes referred to herein collectively as the "**Parties**" and individually as a "**Party**."

RECITALS

WHEREAS, Executive entered into an Employment Agreement with the Company on February 6, 2018, and Executive and the Company entered into an Amendment No. 1 to Employment Agreement, dated as of September 27, 2022 (the Employment Agreement, as amended by the above referenced Amendment No. 1, collectively, the "**Employment Agreement**");

WHEREAS, on May 30, 2023, the Company provided notice to Executive advising Executive that the Company intended to terminate Executive's employment with the Company on June 30, 2023, and such notice was timely and properly delivered by the Company to Executive under the Employment Agreement;

WHEREAS, from and after the date hereof until June 30, 2023, Executive has agreed to resign as Chief Financial Officer of the Company and to provide transition services to the Company in the role of an executive vice president of the Company, and from and after June 30, 2023 until December 31, 2023, Executive has agreed to provide additional transition services to the Company as an advisor to the Company; and

WHEREAS, the Parties desire to enter into other agreements relating to the Employment Agreement and the termination of Executive's employment with the Company as set forth herein.

AGREEMENT

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are incorporated into and made a part of this Agreement for all purposes.
2. **Separation From Employment**. Executive's employment with the Company will terminate effective June 30, 2023 (the "**Separation Date**"). Between the date of this Agreement and the Separation Date (the "**Transition Period**"), the Company will continue to pay Executive his full base salary at the rate of \$350,000 per year, the cost of health insurance for Executive, his spouse and his dependents, and Executive will continue to vesting in all currently outstanding equity awards (which are further described in Section 6(b)).
3. **Pre-Separation Transition Duties**. During the Transition Period, Executive agrees to:
 - (a) cease serving as Chief Financial Officer of the Company, effective on and as of June 2, 2023, and to thereupon serve as an executive vice president of the Company;

- (b) fully transition all of his prior duties and responsibilities in his capacity as Chief Financial Officer as requested or instructed by the Chief Executive Officer of the Company, Executive's successor, the General Counsel of the Company or the Board of Directors of the Company (the "**Board**") from time to time;
- (c) answer questions and provide information relating to the performance of his duties and responsibilities as they existed during his employment as Chief Financial Officer of the Company;
- (d) answer questions and comply with all requests and instructions by the Company and the Board to refrain from engaging in certain duties and responsibilities and other activities that Executive would otherwise perform in his capacity as Chief Financial Officer of the Company, including, but not limited to, requests by the Chief Executive Officer of the Company or the Board for Executive to not be present on Company premises for certain periods of time and for Executive to not communicate with customers, clients, investors, partners, vendors or suppliers of the Company;
- (e) perform such other duties and responsibilities that may reasonably be requested of or assigned to Executive by the Chief Executive Officer of the Company, Executive's successor, the Board or any other executive officer of the Company from time to time to ensure an orderly transition of his duties and responsibilities and knowledge with respect to the role of Chief Financial Officer of the Company and the business, assets, liabilities, financial condition and operations of the Company to the Board, the Chief Executive Officer of the Company, Executive's successor, other executive officers of the Company and/or any other persons designated by the Company or the Board or any member thereof;
- (f) protect and preserve the Company's assets (including digital assets) and financial condition and not engage in any willful acts or conduct that could reasonably be expected to adversely affect the Company's assets, business, financial condition, operations or prospects; and
- (g) perform the following additional obligations and provide the following additional services:
 - (i) complete and deliver to the Company and the Board a written retrospective about where the Company has been financially as an organization and where the opportunities are for the Company in the future;
 - (ii) complete and deliver to the Company and the Board a list of all material third party / financial and accounting points of contact relating to the Company and its business, products, services, existing customers, clients, partners, suppliers, lenders, investors, analysts and service providers, including name, contact information and brief descriptions of their relationships and other involvement with the Company;
 - (iii) complete and deliver to the Company and the Board a list of prospective customers, clients, investors, lenders, analysts and financial services providers which Executive has met or otherwise communicated with in his capacity as Chief Financial Officer of the Company since January 2022 and any prospective customers, clients, investors, lenders, analysts and

vendors which Executive deems advisable for the Company to engage in the future;

- (iv) prepare for the Company and the Board a written report on Executive's activities relating to transition efforts, existing debt and equity transactions, financial and accounting matters, lenders, underwriters, placement agents, investors, and investor relations, so that the Board, the Chief Executive Officer, Executive's successor, Company's executive officers can review and provide feedback, questions, and requests to Executive;
- (v) meet with the Company's executive officers and the Board (and, if elected by the Company, outside counsel) to discuss matters relating to pending litigation and arbitration matters involving the Company, and potential litigation and arbitration matters which are expected to involve the Company;
- (vi) confirm in writing to the Company and the Board on the date hereof and the Separation Date that (A) Executive has retained and shall retain all of Executive's emails relating to the Company, and (B) Executive has not erased any such emails, nor have reason to believe any such emails have been erased; and
- (vii) complete and deliver to the Company a Separation Certificate, in the form attached and incorporated as **Exhibit A** to this Agreement, on the date of this Agreement (the "**Separation Certificate**").
- (viii) Executive will no longer reference himself as the existing Chief Financial Officer of the Company on any social media or other like accounts over which he has control.

4. **Advisor Services.** From the Separation Date and to and including December 31, 2023 (the "**Advisory Service Period**"):

- (a) Executive agrees to provide certain transition-related services to the Company as an advisor to the Company, solely in the status of an independent contractor (it being acknowledged and agreed that the employment relationship between the Company and Executive will terminate as of the Separation Date, and Executive's designation and performance of services as an advisor to the Company during the Advisory Service Period does not and will not create an employment relationship between the Company and Executive).
- (b) Executive will provide the following services as an advisor to the Company, if, as and when requested by the Company, the Chief Executive Officer, Executive's successor, the Chief Operating Officer, the General Counsel and/or the Controller of the Company, or the Board or any member or committee thereof, during the Advisory Service Period (collectively, the "**Advisory Services**"):
 - (i) Executive will continue to answer questions and provide information relating to the performance of his duties and responsibilities as Chief Financial Officer of the Company as they existed during his employment with the Company;

- (ii) Executive will continue to perform such other services that may be reasonably requested of Executive by the Company, the Board or any other executive officer of the Company from time to time to ensure an orderly transition of his duties and responsibilities and knowledge with respect to the business, operations, assets, liabilities, financial, account, audit and securities-related matters of the Company to the Chief Executive Officer, Executive's successor, the General Counsel and the Controller of the Company, other executive officers of the Company and/or any other persons designated by the Company or the Board or any member thereof;
 - (iii) Executive will provide full cooperation to the Company and its personnel, including the Chief Executive Officer, the General Counsel and the Controller of the Company and Executive's successor, the Board and outside counsel to the Company regarding any actual or potential litigation, arbitration, investigations, claims, controversies, or other legal proceedings brought by or against the Company or its affiliates in which Executive was or is directly or indirectly involved or with respect to which Executive had or has knowledge of any particular facts or circumstances giving rise to the related claims, including, but not limited to, making himself available on reasonable prior written notice at locations requested by the Company to discuss issues relating to such claims, for interviews and other communications with the Company and its executive officers and counsel acting on behalf of the Company or the Board or any member thereof in connection with any such matter and appearing without subpoena for deposition or to give testimony in any hearing, trial, or arbitration or other legal proceeding at the request of the Company; and
 - (iv) Executive will provide other advisory services to the Company which are mutually agreed upon by Executive and the Company or the Board.
- (c) Executive agrees to provide Advisory Services of up to twenty (20) hours per month to the Company during the Advisory Service Period, on such dates and at such times as may be reasonably requested by the Company.
 - (d) Executive will be compensated by the Company for providing Advisory Services pursuant to Section 7(b) below, unless otherwise agreed in writing between the Company and Executive. In addition, Executive will be reimbursed for all reasonable and necessary business expenses incurred by Executive in the performance of his duties and responsibilities to the Company during the Advisory Service Period and otherwise timely and properly submitted by Executive to the Company for reimbursement in accordance with the applicable plans, policies, or arrangements. Notwithstanding the foregoing, the Company may, in its sole discretion, elect to terminate further provision of Advisory Services by Executive under this Agreement at any time upon providing written notice to Executive; provided, however, that the Company's obligation to compensate Executive will continue in accordance with Section 7(b) following such termination of the Advisory Services, except as otherwise provided in Section 21 with respect to an Executive Default.
 - (e) Except as otherwise approved in writing by the Chief Executive Officer of the Company or the Chairperson of the Board:

- (i) Executive will, with respect to the Advisory Services, provide Advisory Services only to the extent requested in writing by, and shall report solely to and engage only with, the Chief Executive Officer, the Chief Operating Officer, Executive's successor, the General Counsel and/or the Controller of the Company (the "**Specified Company Officers**");
 - (ii) Executive will not access or use, directly or indirectly, any IT services provided by the Company, including Slack or any other internal messaging system of or utilized by the Company, except that Executive shall be permitted to have and use a Company email address in performing the Advisory Services;
 - (iii) Executive will not communicate, orally or in writing, directly or indirectly, with any other officer or other employee of the Company in connection with performing the Advisory Services or about any product, service, strategy, transaction, or other matter of or with respect to the Company or any other Company Person, other than the Specified Company Officers;
 - (iv) Executive will comply with all policies and procedures of the Company relating to insider trading-related restrictions and social media-related activities, in each case which are applicable to former officers and/or directors of the Company and/or agents and/or independent contractors of the Company, in each case as determined by the Company and specified in writing to Executive; and
- (f) Executive will no longer reference himself as an executive officer of the Company on any social media or other like accounts over which he has control.

5. **[Reserved]**

6. **Separation Payments and Benefits.**

- (a) On the Separation Date, the Company will pay or provide to Executive any accrued but unpaid base salary through the Separation Date (which will be paid on the next regularly scheduled pay date), any accrued vested but unpaid benefits to which Executive may be entitled under the Company's employee benefit plans, policies, and arrangements through the Separation Date (paid or provided in accordance with and subject to the terms of such plans, policies and arrangements), and any unpaid reasonable and necessary business expenses incurred by Executive during Executive's employment in the performance of his duties and responsibilities to the Company prior to the Separation Date and otherwise timely and properly submitted by Executive to the Company for reimbursement in accordance with the applicable plans, policies, or arrangements.
- (b) Executive acknowledges and agrees that [(i) he has been granted the following options to purchase shares of the Company's Common Stock that remain outstanding as of the date of this Agreement (collectively, the "**Options**"): 22,950 Option shares from an Option grant on September 10, 2013] [which have fully vested and are exercisable on the date of this Agreement], 22,950 Option shares from an Option grant on October 6, 2015 which have fully vested and are exercisable on the date of this Agreement and 11,450 Option shares from an

Option grant on January 8, 2018 which have fully vested and are exercisable on the date of this Agreement; (ii) he has been granted the following restricted stock units in the Company ("**RSUs**") that remain outstanding and have not vested on or prior to the date of this Agreement and have not vested on or prior to the date of this Agreement: 132,330 RSUs from an RSU grant on February 4, 2021 (the "**2021 RSU Grant**") and 55,555 RSUs from an RSU grant on March 6, 2023 (the "**2023 RSU Grant**"); and (iii) Executive's interests in all other options and restricted stock units not referenced in this Section 6(a) that were previously granted to Executive have all vested and either been exercised or issued and delivered by the Company to Executive prior to the date hereof, as applicable. The Parties acknowledge and agree that, from and after the date hereof, (1) the Equity Agreements are hereby amended as provided in Sections 7(a) and (b) of this Agreement and (2) except as expressly provided in the Equity Agreements and Sections 7(a) and (b) of this Agreement, Executive does not have and shall not have or be entitled to, and shall not initiate or pursue any Claims for, any rights or interests with respect to any Options, RSUs or other restricted stock units, stock options, compensatory equity or equity-based award or incentive of or from, or any other equity ownership interest in, the Company or its affiliates.

- (c) Executive acknowledges and agrees that, except as expressly set forth in Sections 6 and 7 of this Agreement or as required by applicable law, Executive does not have and shall not have or be entitled to, and shall not initiate or pursue any Claims for, any bonus (including, without limitation, with respect to the Company's fiscal year 2022 or 2023 performance), severance, benefits or other compensation of any kind or nature from the Company or its affiliates.

7. **Consideration.**

- (a) In consideration for and contingent on Executive timely executing, delivering and performing his obligations under this Agreement (and not subsequently revoking this Agreement), with the exception of the Advisory Services set forth in Section 4 of this Agreement
 - (i) The Company shall pay Executive the total aggregate gross amount of severance equal to One Hundred Seventy-Five Thousand Dollars and No/100 Cents (\$175,000); such amount will be paid in the form of equal bi-monthly installments of severance pay to Executive at a rate equal to Executive's base salary rate in effect as of the date of this Agreement, for the period from and including the Separation Date to December 31, 2023, in accordance with the Company's normal payroll practices, less income and payroll tax withholdings and other authorized deductions.
 - (ii) 132,330 RSUs from the 2021 RSU Grant will vest in their entirety on June 30, 2023.
 - (iii) Subject to Executive's timely election of continuation coverage under the Company's group health plan (including medical, dental, and vision plans) in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the Company shall pay or reimburse the full amount of Executive's COBRA premiums for such coverage for Executive, Executive's spouse and Executive's dependents initially (i) through the earlier to occur of (A) the date on which Executive commences full-time employment with another entity and (B) December 31, 2023, in a manner

intended to avoid any excise tax under Section 4980D of the Internal Revenue Code of 1986, as amended, and subject to the eligibility requirements and other terms and conditions of such coverage; and if Executive has not yet commenced full-time employment by December 31, 2023, (ii) thereafter if elected by Executive, through the earlier to occur of (A) the date on which Executive commences employment with another entity and (B) December 31, 2024, paid by Executive.

- (b) In consideration for Executive's continued services as an advisor during the Advisory Service Period, (i) Executive's Options will remain outstanding and the post-termination exercise period applicable to the Options will not commence until December 31, 2023 and (ii) Executive will remain eligible to continue to vest in the 55,555 Remaining RSUs subject to the 2023 RSU Grant on the regularly scheduled vesting dates during the Advisory Service Period and all unvested Remaining RSUs subject to the 2023 RSU Grant will vest in their entirety on December 31, 2023.
- (c) Other than the payments and transfers described in this Section 7 and the payment or other satisfaction of any accrued obligations as stated in Section 6(a), Executive shall not obtain or receive, nor shall he be entitled to obtain or receive, any other salary, wages, bonuses, commissions, incentives, compensation, payments, benefits, or other remuneration related to his employment with the Company or any of its subsidiaries or his separation from employment with the Company or any of its subsidiaries. Executive acknowledges and agrees that the consideration set forth in Section 7(a), constitutes good and valuable consideration for his promises and covenants in this Agreement and his compliance with its terms.

8. **Executive Releases of Claims; Excluded Claims; Related Matters.**

- (a) As consideration for the Company's obligations under this Agreement, Executive hereby agrees that he will sign this Agreement containing the releases of Claims by Executive and the other Executive Parties and other representations and agreements in this Section 8 which are effective from and after the date hereof.
- (b) Executive, on behalf of himself and each other Executive Party, hereby fully, irrevocably, and unconditionally releases, waives and discharges the Company and each other Company Party of, from, and for any and all Claims which any Executive Party now has, may now or in the future have, or has ever had, directly or indirectly, against the Company or any other Company Party ("**Executive Released Claims**").
- (c) Without limiting the generality of the foregoing, except as otherwise prohibited by applicable law, the Executive Released Claims include without limitation:
 - (i) any and all Claims arising from or relating to Executive's employment with, or termination, separation or resignation from, the Company or any of its subsidiaries and any agreement, instrument, or other document to which Executive and the Company was or is a party relating to Executive's employment, (including, without limitation, the Employment Agreement), and any and all Claims arising from or relating to or Executive's service as an or officer or employee of the Company or Executive's service as a

director of the Company, or any policy, practice, decision, report, agreement, instrument, document, conduct, act, or omission of or by the Company or any other Company Party prior to the date hereof;

- (ii) any and all Claims arising from or relating to any other compensation, benefit, or benefit plan associated with Executive's employment with the Company, including, but not limited to, compensation, benefits, and benefit plans governed by the Employee Retirement Income Security Act of 1974 ("**ERISA**");
 - (iii) any and all Claims arising under the law of any jurisdiction, including, but not limited to, wrongful discharge of employment; constructive discharge from employment; termination in violation of public policy; discrimination; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment and conversion;
 - (iv) any and all Claims arising from or under or relating to any violation of any applicable U.S. Federal, state, or municipal law;
 - (v) any and all Claims for attorneys' fees, costs and expenses; and
 - (vi) any and all Claims for any other transaction, occurrence, act, or omission concerning or arising from either Executive's employment with the Company or the termination, resignation or expiration of Executive's employment with the Company.
- (d) The releases contained in this Section cover both claims that Executive knows about and those that Executive may not know about. Executive expressly waives all rights afforded by any statute that limits the effect of a release with respect to unknown claims. In that connection, Executive acknowledges the provisions of California Civil Code § 1542 (to the extent it may apply notwithstanding any other provision of this Agreement), or any analogous statute from another state. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Executive, being aware of the terms of the above statute, expressly waives and relinquishes all rights and benefits Executive may have under that statute as well as any other federal or state statute or common law principle of similar effect. Executive acknowledges that Executive may later discover facts different from, or in addition to, those that Executive now knows or believes to be true regarding the

claims released in this Agreement. Executive agrees that this Agreement, including the releases contained in it, is fully effective in all respects despite the potential discovery of such different or additional facts. Executive has had the opportunity to have the consequences of the above Section 1542 waiver explained to Executive by legal counsel of Executive's choosing.

- (e) Notwithstanding anything contained herein to the contrary, the Executive Released Claims do not include (and Executive does not release, waive or discharge) any of the following Claims ("**Executive Excluded Claims**"):
- (i) Claims of Executive for breach by the Company of this Agreement or any Executive - Company Agreement;
 - (ii) Claims of Executive relating to rights to receive shares of common stock of the Company from the exercise of Options and settlement of vested RSUs under any Equity Agreements;
 - (iii) Claims of Executive for and rights to (A) defense and indemnification for third-party Claims against Executive arising out of his service as an officer or employee of the Company as and to the extent provided to Executive under the Company's Amended and Restated Certificate of Incorporation, the Company's Amended and Restated Bylaws, and/or the Delaware General Corporation Law, or (B) defense and coverage under any director and officer liability insurance policy of the Company the provisions of which are applicable to Executive;
 - (iv) Claims of Executive for unpaid or unreimbursed business expenses of Executive to which Executive is entitled to receive payment or reimbursement under the expense reimbursement policy of the Company;
 - (v) Claims of Executive for worker's compensation insurance coverage or unemployment insurance coverage; or
 - (vi) Claims of Executive the release or waiver of which is or are prohibited by applicable law.
- (f) As an express condition to Executive's eligibility for the receipt and retention of the consideration specified in Section 7 from the Company, on December 15, 2023, Executive shall also execute and deliver to the Company the Supplemental Release Agreement, attached and incorporated as **Exhibit B** to this Agreement (the "**Supplemental Release Agreement**"). The Supplemental Release Agreement shall by its terms be effective with respect to Executive on and as of December 31, 2023. Executive acknowledges and agrees that if Executive fails to execute and deliver the Supplemental Release Agreement on such date, Executive forfeits any eligibility for or entitlement to receive or retain any funds, shares or other assets paid or to be paid, or issued, transferred, delivered or to be issued, transferred or delivered by the Company to Executive under Section 7(b) (collectively, "**Services Period Consideration**") and Executive shall immediately return to the Company all of the Services Period Consideration previously paid, issued, transferred or otherwise delivered to Executive under Section 7(b). If Executive fails to do so, the Company may initiate and pursue any Claims to recover any and all of the Services Period Consideration from Executive and any other Executive Party in arbitration, together with all attorneys' fees, costs and

expenses paid or incurred by the Company arising from, as a result of or in connection with any of the foregoing.

- (g) Executive covenants and agrees that Executive shall not and shall not permit any other person or entity to (and Executive hereby waives and discharges any and all rights which Executive has or may have to) request, file, initiate or pursue any suit, action, arbitration, or other proceeding for or on behalf of Executive or any other Executive Party, for any legal, equitable, or other relief on, for or relating to any Executive Released Claims.
- (h) Except as permitted by subsection (n) below, Executive represents and warrants to the Company on the date hereof and on the Separation Date that he has not requested, filed or initiated, and to the fullest extent permitted under applicable law, Executive covenants and agrees that Executive will not request, file or initiate, or cause to be requested, filed, initiated or pursued on his behalf, any complaint, charge, Claim, suit, action, or other proceeding against the Company before any local, state, or federal court or governmental agency or authority relating to Executive's employment, termination or separation from employment with the Company (each, an "**Employment Proceeding**"). Except to the extent as required by applicable law, Executive covenants and agrees to not participate voluntarily in any Employment Proceeding.
- (i) Executive further represents and warrants to the Company on the date hereof and on the Separation Date that:
 - (i) the certifications of Executive contained in the Separation Certificate are true and correct on and as of the date hereof;
 - (ii) Executive has had the opportunity to disclose, and Executive has so disclosed in writing, to the Company all material matters relating to Executive's terms and conditions of employment with the Company, his termination and separation from employment with the Company, and the business and affairs of the Company and its affiliates;
 - (iii) Executive is not aware of any Claim by Executive or any other Executive Party against the Company or any other Company Party, other than the Executive Released Claims;
 - (iv) no suit, action, arbitration, Claim, or other proceeding has been filed, initiated, or commenced by or on behalf of Executive or any other Executive Party against the Company or any other Company Party;
 - (v) Executive is not aware of any facts or circumstances that would establish or support any Claim or allegation that Executive, or the Company or any other Company Party engaged in acts or conduct that Executive believes could violate any U.S. Federal or state law or regulation (including U.S. Federal securities laws or regulations), or any order or legal requirement of any court or other governmental agency or authority, except for those facts and circumstances which have been disclosed by Executive in writing to the Company; and
 - (vi) Executive has not and is not engaged, directly or indirectly, in any activities or conduct which is described in any of Sections 5-7 of the AWE

& EPI Agreement or Sections 12-13 of this Agreement (collectively, the "**Restrictive Covenants**") or that would otherwise violate, or would reasonably be expected to violate, any of the Restrictive Covenants.

- (j) Executive further represents and warrants to the Company on the date hereof and on the Separation Date, and Executive acknowledges and agrees with the Company, that (i) Executive has not been and is not on the date hereof a party to any agreement or arrangement with the Company or any of its affiliates, other than the Employment Agreement and the Executive - Company Agreements and (ii) any other agreement or arrangement that was or may have been or been purported to be or is in effect between Executive and the Company was or is null and void, was or has been terminated in writing or was or is paid and performed in full (as applicable), or is otherwise hereby merged with and into this Agreement, except as otherwise expressly provided herein.
 - (k) Executive further acknowledges and agrees that nothing in this Section 8 supersedes, eliminates, amends, modifies, waives, removes, or limits any other agreements or obligations of Executive set forth in this Agreement or any Executive - Company Agreement.
 - (l) Executive further hereby acknowledges and agrees that Executive is knowingly and voluntarily waiving and releasing Executive's rights and Claims only in exchange for consideration (something of value) in addition to anything of value to which Executive is already entitled.
 - (m) Notwithstanding any term or provision herein or in the Employment Agreement or any other agreement to the contrary, Executive acknowledges and agrees that, prior to the Separation Date, (i) the Company may terminate Executive's employment immediately for Cause (as defined in the Employment Agreement) under the Employment Agreement if the Company determines that Cause exists; (ii) the Company will not terminate Executive's employment without Cause under the Employment Agreement; and (iii) Executive will not resign or attempt to resign from his employment under the Employment Agreement for any reason on or after the date hereof.
 - (n) Nothing in this Agreement will prohibit, restrict, or limit any communication by any Party permitted by any applicable law, including the National Labor Relations Act, or otherwise prohibit, restrict, or limit the exercise or enforcement of any of Employee's rights under Section 7 of the National Labor Relations Act. Further, both Parties acknowledge that this Agreement does not limit either Party's right, where applicable, to file or participate in an investigative proceeding of or administrative claim with any federal, state or local governmental agency or authority, including (but not limited to) the Equal Employment Opportunity Commission, the Texas Workforce Commission, the United States Securities and Exchange Commission, or National Labor Relations Board. To the extent permitted by law, Executive agrees that if such an administrative claim is made, Executive shall not be entitled to recover any individual monetary relief or other individual remedies.
9. **Indemnification; D&O Insurance.** The Company agrees that Executive shall be entitled to defense and indemnification and directors and officers insurance coverage as and to the extent provided to Executive under any applicable Executive - Company Agreement, the Company's Amended and Restated Certificate of Incorporation, the

Company's Amended and Restated Bylaws, and/or the Delaware General Corporation Law, and under any director and officer liability insurance policy of the Company which is applicable to Executive.

10. [Reserved]

11. [Reserved]

12. **Non-Disclosure of Confidential Information.**

- (a) Executive shall not use, retain, disclose, or otherwise appropriate any Confidential Information (as defined below) of the Company Group at any time. Executive acknowledges and agrees that he was provided (and provided access to) Confidential Information in his capacity as Chief Financial Officer or other executive officer of the Company and may continue to be provided access to Confidential Information as an advisor to the Company during the Advisory Services Period.
- (b) Confidential Information means any and all of the Company Group's confidential, proprietary, and/or trade secret information (whether or not specifically identified as confidential) in any form or medium, including, but not limited to: (i) internal business information of the Company Group, including information relating to the Company's financial condition, debt and equity funding and fundraising efforts, and any other strategic plans and practices, operations, business, accounting, financial or marketing plans, practices or programs, training practices and programs, salaries, bonuses, incentive plans, and other compensation and benefits information and accounting and business methods, (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, the Company Group, its customers, and its confidential, proprietary and/or trade secret information, (iii) any confidential, proprietary, and/or trade secret information of any third party that the Company Group has a duty to maintain confidentiality of, or use only for certain limited purposes, (iv) industry research compiled by, or on behalf of, the Company Group, including identities of potential target companies, management teams, and transaction sources identified by, or on behalf of, the Company Group, (v) compilations of data and analyses, processes, methods, track and performance records, data and databases relating thereto, and (vi) any confidential or proprietary information included within any Intellectual Property of the Company Group and updates of any of the foregoing.
- (c) Executive is hereby provided notice that under the Defend Trade Secrets Act, no person will be held criminally or civilly liable under federal or state trade secret law for the disclosure of a trade secret made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law, or made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (d) If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney and use the trade secret information in the court proceeding (provided that Executive and/or Executive's attorney (i) files any document containing the trade secret under seal and (ii) does not disclose the trade secret, except pursuant to court order).

- (e) Nothing in this Section 12, or in this Agreement generally, will or is intended to prohibit any communication by any Party with any government agency or authority, including without limitation the Equal Employment Opportunity Commission, the Texas Workforce Commission, the United States Securities and Exchange Commission, or the National Labor Relations Board with respect to any possible violation by the Company or any affiliate of the Company of any laws, rules, or regulations.
13. **Non-Disparagement of the Company Group.** Executive shall not at any time take any action through any medium or in any forum to directly or indirectly disparage, defame or interfere with, or make any derogatory or negative statements about, the Company Group or any other Company Party or the Company Group's business, customers, clients, partners or suppliers with respect to the Company, on or about any matter or in any manner whatsoever, including, but not limited to, any of their respective products or practices, business reputation, abilities, actions, or otherwise. This non-disparagement provision includes, without limitation, email, electronic media, social media and any other postings to the Internet. Nothing in this Section 13 shall prevent Executive from complying with the lawful orders or processes of any court or governmental agency or authority with competent jurisdiction or regulatory authority over the Company or any other Company Party, including the obligation to testify truthfully in any legal proceeding. Further, nothing in this Section 13, or in this Agreement generally, shall prohibit, restrict, or limit Executive's exercise or enforcement of any of his rights under Section 7 of the National Labor Relations Act.
14. **Scope of Covenants.** Executive acknowledges and agrees that the Restrictive Covenants are reasonable and necessary for the protection and maintenance of the Company and its affiliates and to protect the Confidential Information and goodwill and business relationships and interests of the Company Group and the other Company Parties and that, without such protection, the customer and client relationships and competitive advantage of the Company Group would be materially and adversely affected. Executive further acknowledges and agrees that he has received good and valuable consideration in exchange for these restrictions and that these restrictions shall not impose an undue hardship on Executive, since he has knowledge and skills which may be used in industries other than those in which the Company Group conducts business.
15. **Equitable and Other Relief.** Executive acknowledges and agrees that money damages would be both incalculable and an insufficient remedy for a breach by Executive of any of the Restrictive Covenants, and that any such breach would cause the Company irreparable harm. Accordingly, notwithstanding the arbitration obligations of the Parties below, and in addition to any other rights and remedies the Company may have at law or in equity, the Company shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance, in connection with Executive's breach of any of the Restrictive Covenants from a court of competent jurisdiction. In addition to the rights and remedies the Company may have at law or in equity, any such violation by Executive shall entitle the Company to be excused from all of its then remaining obligations under Section 7 hereof, and no action taken by the Company under this Section 15 shall affect the enforceability of the releases provided by Executive pursuant to Section 8 or any other term or provision of this Agreement. In the event any arbitration or court determines that the time and scope contained in any restrictive covenant set forth in this Agreement is overly broad or unreasonable, the arbitrator or court will reform such restrictive covenant to the extent necessary to make such provision reasonable. Executive further acknowledges and agrees that each and any restrictive covenant which is contained in any Executive - Company Agreement shall be

and remain enforceable against Executive and in full force and effect in accordance with its respective terms and shall supplement (and not limit or restrict) each and any restrictive covenant which is contained in this Agreement.

16. **Confidentiality of Agreements.** Executive, on behalf of himself and each other Executive Party, agrees that he shall not comment on or discuss his employment with the Company or the circumstances of the separation of his employment with the Company or the existence, preparation, negotiation, execution or delivery of this Agreement or any Executive - Company Agreement with any other person or entity, other than his spouse, his attorney, and/or his financial and tax advisors, each of whom or which shall agree to keep all of this information confidential. Notwithstanding the foregoing, Executive may identify himself as an "advisor" to the Company, orally or in writing, to any employee of the Company and to any other person or entity for so long as Section 4 of this Agreement is in effect. Executive further acknowledges and agrees that he shall maintain in the strictest confidence the existence and terms and provisions of this Agreement and each Executive - Company Agreement. Nothing in this Agreement or this confidentiality provision shall preclude, prohibit, or otherwise limit in any way Executive's rights and abilities to contact, communicate with, report unlawful conduct to, or provide documentation to any applicable federal, state, or local governmental agency or authority for investigation or participate in any whistleblower program administered by such agencies. Further, nothing in this Section 16, or in this Agreement generally, shall prohibit, restrict, or limit Executive's exercise or enforcement of any of his rights under Section 7 of the National Labor Relations Act.
17. **Additional Acknowledgments.** Executive further acknowledges that: (a) he has read and understands the terms of this Agreement and its effect; (b) he has had the opportunity to consult with an attorney prior to executing this Agreement, and has been advised to do so; and (c) he has signed this Agreement voluntarily and knowingly in exchange for his receipt of the consideration described herein, which he acknowledges as adequate and more than he is already entitled to receive.
18. **Non-Disparagement of Executive.**
 - (a) The Company agrees that it will instruct its officers and directors not to, at any time, take any action through any medium or in any forum to directly or indirectly disparage or otherwise defame, or interfere with, or make derogatory or negative statements about, Executive. This non-disparagement provision includes, without limitation, email, electronic media, and any postings to the Internet. Nothing set forth in this Section 18 shall prevent the Company from complying with the lawful orders or processes of any court or government agency or authority with competent jurisdiction or regulatory authority over the Company, including the obligation to testify truthfully in any legal proceeding.
 - (b) The Company acknowledges and agrees that money damages would be both incalculable and an insufficient remedy for a breach by the Company of the restrictive covenants set forth in this Section 18, and that any such breach would cause Executive irreparable harm. Accordingly, in addition to any other rights and remedies Executive may have at law or in equity, Executive shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance, in connection with the Company's breach of any of the provisions set forth in this Section 18.
19. **Return of Property.**

- (a) Executive agrees that, except as otherwise agreed in writing with the Company in order for Executive to provide services as an advisor to the Company during the Advisory Service Period, Executive will, on or before the Separation Date, return all Company assets and property and Confidential Information issued to or created or obtained by him or otherwise in his possession or control, including all equipment and documents and any copies thereof, in any form whatsoever, including computer hardware, computer files, laptop computers, cellular telephones, credit cards, keys, badges, electronic records and files, and any other property belonging to any member of the Company Group in Executive's possession or control at any location (whether on the Company's premises, at Executive's home residence, or any other offsite location). Except as otherwise agreed upon in writing with the Company in order for Executive to provide Advisory Services to the Company, Executive shall not access or use any Company office or Company assets or property after the Separation Date. Notwithstanding the foregoing, Executive may keep and retain as his own property the following assets or property of the Company previously provided to Executive by the Company: laptop computer, following appropriate removal of confidential information, intellectual property and other information and data of or about the Company and its affiliates by Company IT personnel, which Executive will confirm and certify in writing to the Company has been completed.
- (b) Executive further agrees to return or provide to the Company, on or before the Separation Date, all usernames, passwords, credentials, access rights, dual verification codes, answers to verification questions, and all other log-in information necessary to access any Company computers, phones, documents, databases, networks, or other information, and a list of any documents that Executive has created or of which Executive is aware are password-protected, and the passwords necessary to access such documents.
- (c) Executive also agrees that on or before the end of the Advisory Service Period he will return or provide to the Company, and from and after the end of the Advisory Service Period Executive will not access (or have access to) or use, any and all Company property and any and all Confidential Information issued to him or otherwise in his possession or control for purposes of providing services to the Company as an advisor hereunder, if any.

20. **Default; Remedies.**

- (a) If any Executive Default shall occur and be continuing, the Company may, in addition to exercising any other rights and remedies granted or otherwise available to the Company under this Agreement, any Executive - Company Agreement, applicable law or otherwise, upon five (5) business days' prior written notice to Executive, cease making any payments or transferring any property to Executive under Section 7 hereof and terminate in whole or in part Section 4 hereof.
- (b) Executive acknowledges and agrees that the occurrence and continuance of an Executive Default and the exercise by the Company of any rights or remedies in connection therewith will not limit or affect any of Executive's other obligations under this Agreement or any Executive - Company Agreement or any releases of any Claims by Executive or any other Executive Party under this Agreement, or any other rights or remedies or benefits of or conferred upon the Company and its affiliates in this Agreement or any Executive - Company Agreement.

- (c) If any Company Default shall occur and be continuing, Executive may, in addition to exercising any other rights and remedies granted or otherwise available to Executive under this Agreement, any Executive - Company Agreement, applicable law or otherwise, upon prior written notice to the Company, cease providing Advisory Services to the Company under Section 4 hereof.
- (d) The Company acknowledges and agrees that the occurrence and during the continuance of a Company Default and the exercise by Executive of any rights or remedies in connection therewith will not limit or affect any of the Company's other obligations under this Agreement or any Executive - Company Agreement or any releases of any Claims by the Company under this Agreement, or any other rights or remedies or benefits of or conferred upon Executive in this Agreement or any Executive - Company Agreement.

21. **[Reserved]**

22. **Section 409A.** It is the intent of the Parties that this Agreement and all payments, transfers and benefits referenced herein shall be made in full compliance with Section 409A of the Internal Revenue Code of 1986 ("**Section 409A**"), as amended, and to the maximum extent possible this Agreement shall be interpreted and construed in accordance therewith and modified accordingly if necessary. If any payment, transfer or benefit required under this Agreement cannot be provided or made at the time specified herein without incurring excise taxes or penalties under 409A, then such benefit or payment shall be provided in full at the earliest time thereafter when such excise taxes or penalties will not be imposed. In no event whatsoever will the Company Group or their respective officers, directors, employees, or agents be liable for any additional tax, interest, or penalties that may be imposed on Executive by Section 409A or damages for failing to comply with Section 409A.

23. **Non-Admission.** The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by either Party of wrongdoing or evidence of any liability or unlawful conduct of any kind or of any duty owed by either Party to any other person or entity.

24. **No Rehire.** Except as otherwise agreed in writing with the Company for Executive to provide services as an advisor to the Company after the Separation Date, as of the Separation Date, Executive acknowledges and agrees that the Company has no obligation whatsoever to reinstate or retain Executive as an employee, consultant, advisor, officer, director, Board member, or independent contractor in the future. Executive further acknowledges and agrees that Executive will not seek or apply for or otherwise be entitled to have any employee, consultant, advisor, officer, director, Board member, or independent contractor relationship with the Company.

25. **Withholding.** The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local, or foreign withholding or other payroll taxes or charges that the Company is required to withhold.

26. **Right of Offset.** The Company and its affiliates may offset any payment to be made under this Agreement by any amount that Executive owes to the Company or its affiliates under this Agreement or any other agreement at the time such payment would otherwise be made.

27. **No Waiver.** No waiver of any Party of any breach of or default by the other Party under this Agreement shall be deemed to constitute a waiver of any later or other breach or default or as a waiver of any other provision of this Agreement.
28. **Severability.** If any term or provision of this Agreement, or portion of it, is held by any court of competent jurisdiction to be illegal, invalid, or unenforceable in such jurisdiction, the remainder of such term or provision is not thereby affected and will be given full effect, without regard to the invalid portion. It is the intention of the Parties that, if any court construes any term or provision of this Agreement, or any portion of it, to be illegal, void or unenforceable because of the duration of such provision or the area matter covered thereby, such court shall reduce the duration, area, or matter of such term or provision, and, in its reduced form, such term or provision shall then be enforceable and shall be enforced.
29. **Successors and Assigns.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Company and the Company Group. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, Executive. The rights and obligations of Executive under this Agreement and any Executive - Company Agreement may not be assigned or otherwise transferred, directly or indirectly, by Executive to any other person or entity without the prior express written consent of the Company.
30. **Consideration and Revocation Periods.** Executive shall have twenty-one (21) calendar days from Executive's date of receipt via email from the Company of the initial draft of this Agreement within which to consider the terms of this Agreement and, if he chooses to do so, sign and accept same. If Executive has not returned an executed Agreement to the Company within such 21-day consideration period, the offer and all consideration and other terms and provisions under this Agreement will be deemed withdrawn and of no force and effect. Executive agrees that any modifications, material or otherwise, made to this Agreement do not restart the running of or otherwise affect such 21-day consideration period. Further, Executive may revoke this Agreement by providing written notice of revocation of this Agreement to the Company within seven (7) days following the date Executive signs it. Executive agrees that Executive will not receive the benefits provided by this Agreement if Executive revokes this Agreement. Executive also acknowledges and agrees that if the Company has not received Executive's written notice of revocation of this Agreement prior to the expiration of the above referenced seven (7) day period, then Executive will have forever waived Executive's right to revoke this Agreement, and this Agreement shall thereafter be and remain enforceable and in full force and effect in accordance with its terms.
31. **Entire Agreement.**
- (a) This Agreement and the Executive - Company Agreements (as amended by this Agreement) and the Supplemental Release Agreement shall constitute the entire agreement between the Parties and this Agreement expressly supersedes all prior negotiations, understandings, and agreements, whether oral or written, with respect to the subject matter hereof, except as otherwise expressly provided herein. The Parties agree that this Agreement expresses a full and complete settlement, regardless of the adequacy or inadequacy of the amounts paid, that it is intended to avoid litigation, and that it is to be final and complete.
 - (b) The Parties agree that there is absolutely no agreement or reservation not clearly expressed herein, that the consideration paid (or to be paid) herein is all that Executive is ever to receive for all Claims for benefits, damages, liquidated

damages, losses, costs, fees, attorneys' fees and other expenses, or otherwise, and that the execution and delivery of this Agreement is with the full knowledge that this Agreement waives and releases all possible Claims which Executive or any other Executive Party has or may have against the Company or any other Company Party.

- (c) This Agreement hereby merges all other agreements, arrangements, representations and understandings which exist or may exist between Executive and the Company, whether oral or written, on the date hereof, except for the Executive - Company Agreements which shall remain in full force and effect in accordance with their respective terms, except as otherwise expressly provided herein.
 - (a) Executive acknowledges and agrees that no other promises or agreements have been made offered by the Company or any other Company Party to Executive or any other Executive Party for or with respect to this Agreement or any term or provision hereof (other than those which are expressly described herein), and no such other promises or agreements will be binding between Executive and the Company unless they are set forth in writing and signed by Executive and the Company.
32. **Amendments.** This Agreement may not be amended, modified, supplemented or waived, except by in a written instrument signed by each Party and specifically referencing this Agreement.
33. **Arbitration.** Except as permitted in Section 15 above and without limiting Section 11 of the AWE & EPI Agreement, the Parties agree that any dispute, claim or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement, shall be settled by arbitration to be held in Austin, Texas in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. To the extent permitted by law, the Company shall pay the administrative fees associated with the arbitration, except for the first \$300.00 in administrative fees for any arbitration that is initiated by Executive, and each of the Company and Executive shall separately pay their own respective counsel fees and expenses.
34. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Texas without regard to conflict of laws principles thereof that would result in the application of any other law.
35. **Specific Performance.** In the event of a breach of any term or provision of this Agreement, either Party may institute an action, as permitted in Sections 15 and 33 of this Agreement, specifically to enforce any term or terms of this Agreement and/or to seek any damages for breach.
36. **Counterparts.** This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, taken together, constitute the same Agreement. A signature made on a faxed or electronically mailed copy of this Agreement or a signature transmitted by facsimile or by electronic mail in PDF shall have the same effect as the original signature.

37. **Voluntary Execution.** The Parties, intending to be legally bound, apply their signatures voluntarily and with full understanding of the contents of this Agreement and after having had ample time to review and study this Agreement with the assistance of legal counsel.
38. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
- (a) "**AWE & EPI Agreement**" means the At-Will Employment and Employee Proprietary Information Agreement, dated July 19, 2011, between Executive and the Company.
 - (b) "**Claim**" means any debts, obligations, claims, rights, liabilities, damages, losses, demands, actions, contracts, causes of action, suits, fees (including, without limitation, attorneys' fees), costs and expenses of any and every kind or nature, whether known or unknown, asserted or unasserted, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, or direct or indirect, whether in law or in equity.
 - (c) "**Company Default**" means any of the following:
 - (i) the failure of the Company to pay any amount or transfer any asset (as applicable) to Executive as and when required under Section 6(a) or Section 7 of this Agreement and such failure continues unremedied for five (5) business days following written notice thereof from Executive to the Company;
 - (ii) any representation and warranty made by the Company under this Agreement shall have been incorrect when made or deemed made; or
 - (iii) the failure of the Company to perform or observe any other covenant, obligation or other agreement of the Company contained in this Agreement or any Executive - Company Agreement and such failure continues unremedied for a period of five (5) business days following written notice thereof from Executive to the Company.
 - (d) "**Company Party**" means the Company and each of its subsidiaries and affiliates, and each and all of its and their respective past, present, and future directors, Board members, Board committees, officers, employees, shareholders, partners, investors, insurers, trustees, administrators, successors, heirs, assigns, consultants, attorneys, agents, and other representatives.
 - (e) "**Employment Agreement**" means the Employment Agreement, dated February 6, 2018, between Executive and the Company, as amended by the Amendment No. 1 to Employment Agreement, dated as of September 27, 2022, between Executive and the Company.
 - (f) "**Equity Agreement**" means all existing stock option and restricted stock unit grant-related agreements between Executive and the Company which are in effect as of the date of this Agreement.
 - (g) "**Executive - Company Agreement**" means each Equity Agreement, the AWE & EPI Agreement and the [Indemnification Agreement, dated as of _____, between the Company and Executive]. **[NOTE: Matt please provide copy]**

- (h) "**Executive Default**" means any of the following:
- (i) any representation and warranty made by Executive under this Agreement shall have been incorrect when made or deemed made; or
 - (ii) the failure of Executive to perform or observe any other covenant, condition, obligation or other agreement of Executive contained in this Agreement or any Executive - Company Agreement and such failure continues unremedied for a period of five (5) business days following written notice thereof from the Company to Executive.
- (i) "**Executive Party**" means Executive and each and all of his family members, administrators, heirs, executors, estates, agents, representatives, entities, successors and assigns.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto hereby execute this Agreement as of the date first above written.

MATT AUNE

PHUNWARE, INC.

By: /s/ Matt Aune By: /s/ Russ Buyse
Name: Matt Aune Name: Russ Buyse
Title: _____ Title: Chief Executive Officer
Date: June 2, 2023 Date: June 2, 2023

Signature Page to Separation, Transition and General Release Agreement

EXHIBIT A
SEPARATION CERTIFICATE

EXHIBIT B

SUPPLEMENTAL RELEASE AGREEMENT

Phunware Announces CFO Transition

AUSTIN, TX, June 2, 2023 (ORIGINAL: GLOBE NEWSWIRE) – [Phunware, Inc. \(NASDAQ: PHUN\)](#) (“Phunware” or the “Company”), the pioneer of Location Based SaaS and offers the only fully integrated enterprise cloud platform for mobile that enables brands to engage, manage and monetize their anytime, anywhere users worldwide, announced the appointment of Troy Reisner as Chief Financial Officer (“CFO”), effective June 2, 2023. Mr. Reisner will succeed Matt Aune and will become a member of the Company’s executive management team, reporting to Russ Buyse, the Company’s Chief Executive Officer. Matt Aune will fully transition into his role as an advisor and continue to support the Company through December 31, 2023.

Mr. Reisner is a seasoned executive with over 30 years of global financial and operational experience. Most recently, he served as CFO of Keystone Tower Systems where he managed the finance division for nearly four years. Prior to that, Mr. Reisner was a Partner at Deloitte & Touche for over 16 years where he strategically advised clients on different financing structures, provided counsel to Audit Committee members on corporate governance matters, worked closely with senior leaders to interpret and manage complex areas of accounting and SEC rules related to financial statement risk, and more. Mr. Reisner has a Bachelor of Science (B.S.) Accounting from Southern Illinois University Edwardsville.

"On behalf of Phunware, I'm delighted to welcome Troy as our new CFO," said Mr. Buyse. "Troy brings a mix of strategic finance, deal-making, and operational experience that will power Phunware into the future. His ability to provide high-quality guidance and counsel, especially within the financial realm, will be extremely beneficial for our organization as we are looking to optimize costs and maximize our working capital. We look forward to benefiting from his insight as Phunware advances towards the next chapter of its corporate journey."

"I am very excited to join the Phunware team as they are striving to take mobile engagement to the next level," said Troy Reisner. "I look forward to working with Russ and each talented person at Phunware to help drive us forward for the benefit of our people, our shareholders and our customers."

Mr. Buyse added: "I would also like to thank Matt for his decade-long service to the Company. He led our finance team through several phases of Phunware's life, from its early custom development days to becoming a public company in 2018 to pivoting to our Location Based SaaS Platform and acquiring Lyte. Matt was a respected member of our executive team and will always be a friend to the company."

Safe Harbor Clause and Forward-Looking Statements

This press release includes forward-looking statements. All statements other than statements of historical facts contained in this press release, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words "anticipate," "believe," "continue," "could," "estimate," "expect," "expose," "intend," "may," "might," "opportunity," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions that convey

uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. The forward-looking statements contained in this press release are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading "Risk Factors" in our filings with the Securities and Exchange Commission (SEC), including our reports on Forms 10-K, 10-Q, 8-K and other filings that we make with the SEC from time to time. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under "Risk Factors" in our SEC filings may not be exhaustive. By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this press release. In addition, even if our results or operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this press release, those results or developments may not be indicative of results or developments in subsequent periods.

About Phunware, Inc.

Everything You Need to Succeed on Mobile — Transforming Digital Human Experience

Phunware, Inc. (NASDAQ: PHUN), the pioneer of Location Based SaaS and offers the only fully integrated enterprise cloud platform for mobile that enables brands to engage, manage and monetize their anytime, anywhere users worldwide. Phunware's Software Development Kits (SDKs) include location-based services, mobile engagement, content management, messaging, advertising, loyalty (PhunCoin & PhunToken) and analytics, as well as a mobile application framework of pre-integrated iOS and Android software modules for building in-house or channel-based mobile application and vertical solutions. Phunware helps the world's most respected brands create category-defining mobile experiences, with approximately one billion active devices touching its platform each month when operating at scale. For more information about how Phunware is transforming the way consumers and brands interact with mobile in the virtual and physical worlds, visit <https://phunware.com> and follow @phunware on all social media platforms.

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